

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

TRAVIS A. SMITH,

Petitioner,

v.

JEFFERY WOLFE, Warden,
Respondent.

Case No. 2:04-cv-1010

JUDGE SARGUS

Magistrate Judge KEMP

OPINION AND ORDER


On April 26, 2004, the Magistrate Judge issued a *Report and Recommendation* recommending that all of petitioner's claims, with the exception of claim three, be dismissed as procedurally defaulted. Respondent was directed to provide an affidavit from defense counsel addressing whether counsel had advised petitioner of his right to appeal within twenty days. Doc. No. 34. Respondent has objected to the Magistrate Judge's recommendations on claim three. Respondent again argues that the Constitution does not require a that a criminal defendant be advised of his right to appeal in the context of a guilty plea.

Pursuant to 28 U.S.C. 636(b)(1), this Court has conducted a *de novo* review of those portions of the *Report and Recommendation* objected to by respondent. For the reasons discussed in the Magistrate Judge's *Report and Recommendation*, respondent's objections on claim three are **OVERRULED.**

As to the remainder of petitioner's claims, although the parties were specifically advised of their right to object to the *Report and Recommendation*, and of the consequences of their failure to do so, there has nevertheless been no objection to the Magistrate Judge's recommendation.

The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. All of petitioner's claims, with the exception of claim three, are **DISMISSED**. On claim three, respondent is **DIRECTED** to submit an affidavit from defense counsel within twenty (20) days of the date of this order, addressing whether counsel advised petitioner of his right to appeal. Respondent may also submit any additional documents that may be helpful to the Court's consideration of the merits of claim three.

IT IS SO ORDERED.

 5-30-2006

EDMUND A. SARGUS, JR.
United States District Judge